

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3418-01  
Bill No.: HB 1319  
Subject: Energy; Environmental Protection; Natural Resources; Utilities  
Type: Original  
Date: February 4, 2002

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON STATE FUNDS</b>			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
General Revenue	(\$308,931 to Unknown)	(\$358,820 to Unknown)	(\$368,444 to Unknown)
DNR Dedicated Funds	(Unknown)	(Unknown)	(Unknown)
<b>Total Estimated Net Effect on <u>All</u> State Funds</b>	<b>(\$308,931 to UNKNOWN)</b>	<b>(\$358,820 to UNKNOWN)</b>	<b>(\$368,444 to UNKNOWN)</b>

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Federal Funds	(Unknown)	(Unknown)	(Unknown)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>(UNKNOWN)</b>	<b>(UNKNOWN)</b>	<b>(UNKNOWN)</b>

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
<b>Local Government</b>	<b>(UNKNOWN)</b>	<b>(UNKNOWN)</b>	<b>(UNKNOWN)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 10 pages.

---

## FISCAL ANALYSIS

### ASSUMPTION

Official from the **Department of Natural Resources (DNR)** assume this proposal prevents the state from creating rules relating to coal-fired generating plants to be more strict than the federal government. However, as noted, if it can be demonstrated that lacking certain rules creates "significant adverse impact to the public health, welfare, or the environment ..." and "criteria and rule-making is based upon reasonably available scientific data, " DNR can establish rules that do not have a comparable federal rule. Also, this proposal provides for adoption of federal environmental protection rules and regulations by reference.

DNR assumes specifically, the proposed legislation addresses rules relating to disposal of solid waste (Section 260.225, RSMo); management of hazardous waste (Section 260.370.3, RSMo); underground storage tanks (Section 319.137, RSMo) and prevention, control, and abatement of existing or potential water pollution (Section 644.026.3, RSMo).

DNR assumes this legislation establishes a task force to conduct a study comparing the impacts of burning coal to generate electricity with impacts of burning natural gas to generate electricity and develop educational materials on environmental issues relating to the generation of electricity. The members of the task force may include the Public Service Commission, the Department of Elementary and Secondary Education and the Department of Natural Resources.

DNR assumes it must establish a repository for technical information about clean coal technologies, and serve as a clearinghouse for such information.

Due to uncertainties with the number of instances in which a state rule may be required to protect Missourians' health and the environment because no comparable federal rule exists, the DNR is unable to determine the long range impact of this legislation.

When promulgating rules not addressed by federal law, the DNR would be required to prove a significant adverse impact to the public health, welfare, or the environment. In addition, the rule-making must be based upon reasonably available scientific data, and must, at a minimum include consideration of health, welfare, economics, pollution prevention, and the effectiveness and cost of available control methods. Because the interpretation of significant adverse impact and reasonably available scientific data may be broad, the fiscal impact of this legislation is unknown.

DNR believes implementation of this legislation would be required to be determined by the courts. DNR expects that legal challenges will be made on a rule-by-rule basis. DNR assumes that existing rules considered stricter than the federal rule (i.e., no comparable federal rule) may

ASSUMPTION (continued)

also be challenged, based upon this legislation. This would require extensive staff time and resources to document and substantiate the existing rules to the level required in this legislation.

Missouri has some environmental issues that are not specifically addressed in the federal law (i.e., karst topography, threat of earthquakes, flooding problems). It should be noted that this proposal may slow or prevent DNR from delivering and refining programs to address these environmental concerns.

This proposed legislation allows for a coal fired generating plant to apply to DED for tax credits for installing pollution control devices. DNR assumes that DED would consult with DNR before approving these tax credits.

DNR assumes that any rule promulgated pursuant to the sections outlined in the proposal could have an impact on a coal-fired generating plant. The proposed legislation states that if a rule impacts a coal-fired generating plant, the rule may not be stricter than federal unless certain criteria are met. As a result, the department assumes that the no stricter than provision of the proposed legislation would impact all rules promulgated.

DNR assumes additional staff time and resources would be required when promulgating new rules which would be stricter than the federal rule. In addition, DNR estimates extensive staff time and resources would be required to document and substantiate (to the level in this legislation) if existing rules which may not have comparable federal rules are challenged. When promulgating new or revised rules, DNR would be responsible for proving a significant adverse impact and providing documentation to substantiate with reasonably available scientific data the necessity of such rules. Since the proposed language only applies to the promulgation of rules, DNR assumes that a coal fired generating plant would have to adhere to existing rules.

Depending upon the interpretation of "stricter than" or "comparable to" DNR already has approximately 115 rules which have been promulgated to meet specific Missouri needs that may be considered "stricter than" federal law. Depending upon the interpretation of the definition of "significant adverse impact" and "reasonably available scientific data" DNR estimates it could possibly take between 120 hours and 450 hours per rule to review, document, substantiate, and possibly promulgate revised state rules. Assuming 1,800 available hours per year, it would take approximately 8 FTE (assuming 120 hours per rule) or approximately 29 FTE (assuming 450 hours per rule) to implement this legislation.

DNR assumes additional staff time and resources would be required when promulgating new rules. DNR is unable to determine the number of rules which would be promulgated in later years which would be considered stricter than the federal law.

ASSUMPTION (continued)

In addition, DNR is unable to determine the legal costs associated with challenges to existing rules from the passage of this legislation.

The proposed legislation states that the Division of Energy of DNR is to establish a repository for technical information about clean coal technologies, and serve as a clearinghouse for such information. Currently, DNR provides information on alternative energy uses. At this time, DNR does not plan to request resources for this provision. However, if the task of establishing and maintaining the proposed repository exceeds DNR's expectations, then it may be necessary to request additional resources through the normal budget process.

Officials from the **Department of Economic Development (DED)** assume Section 135.315 allows DED to issue a tax credit for the purchase of high efficiency pollution control associated with coal fired power generation. The credit is equal to 50% of the purchase price and shall not exceed a one time cost of \$10 million per credit. The process will require one Economic Development Incentive Specialist II to conduct work associated with the coal pollution control tax credit and the awareness program. DED projects cost for this proposal as \$0 to unknown. The credit can be carried forward or backward.

DED assumes Section 620.1600 has DED forming a task force to study coal burning vs. natural gas and helping to distribute literature produced. DED anticipates some cost of hosting meetings and print costs for the literature.

Officials from the **Department of Economic Development, Office of Public Counsel** assume this legislation does not significantly affect their agency.

Officials from the **Department of Economic Development, Public Service Commission (PSC)** assume this legislation will not have a fiscal impact on their agency. This proposal provides an incentive to consider "clean coal" technology and changes solid waste disposal requirements. Also, this bill changes the way electrical generation equipment is assessed and distributes the taxes 50% to the county where the plant is located and 50% to the counties contiguous to that county. PSC is mentioned in the legislation where the director of DED establishes a task force to study the impacts of burning coal vs. burning natural gas to generate electricity.

Officials from the **Department of Revenue (DOR)** state this legislation authorizes a one-time tax credit equal to fifty percent of the purchase price for building a coal-fired electric generating plant after August 28, 2002, that is located in this state and that is fitted with pollution control devices, or retrofitted old coal plants with pollution control devices. The tax credit shall not exceed ten million dollars and may be carried forward to any subsequent five years or carried back to three prior years. The tax credit can be transferred or sold.

ASSUMPTION (continued)

DOR does not know how many of these credits will be sold, assigned or transferred. Therefore, the following could be used - one Tax Processing Tech I for every 10,000 credit claims and one Tax Processing Tech I for every 3,680 additional returns with credits received.

Officials from the **State Tax Commission (TAX)** assume this legislation will not have a fiscal impact on their agency.

Officials from the **Office of the Secretary of State (SOS)** assume this bill establishes the Clean Coal Technologies Information Repository and allows tax credits for coal-generated plants with pollution control devices. The Department of Economic Development, Department of Natural Resources and Hazardous Waste Management Commission shall promulgate rules to implement this bill which will result in our division publishing rules in the Missouri Register and the Code of State Regulations.

Based on experience with other divisions, the rules, regulations and forms issued by the Department of Economic Development, Department of Natural Resources and Hazardous Waste Management Commission could require as many as approximately 66 pages in the Code of State Regulations. For any given rule, roughly half again as many pages are published in the Missouri Register as in the Code because cost statements, fiscal notes and the like are not repeated in Code. These costs are estimated. The estimated cost of a page in the Missouri Register is \$23.00. The estimated cost of a page in the Code of State Regulations is \$27.00. The actual costs could be more or less than the numbers given. SOS estimates the cost for FY03 to be \$4,059. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded and withdrawn.

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriations process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Department of Elementary and Secondary Education (DES)** states this proposal creates a tax credit for any taxpayer which incurs costs for building a coal-fired electric generating plant after August 28, 2002, which is fitted with pollution control devices and located in Missouri or retrofitting an old coal plant located in this state with pollution control devices.

The DES would be impacted in the area of serving on the task force and disseminating the educational materials to students. DES will experience minimal travel costs for a representative to sit on the task force. DES estimates printing costs of \$25,000 to disseminate the educational

ASSUMPTION (continued)

materials developed by the task force. DES assumes there is no impact on the state aid formula except that more tax credits mean less General Revenue available statewide for state use including education. DES defers to the DED regarding impact to the state's General Revenue Fund.

Officials from the **Department of Health and Senior Services (DOH)** assume this legislation will prohibit DNR from establishing rules that are more strict than federal laws governing the same environmental area (solid waste). If the federal EPA rules and regulations are not sufficient to protect public health, DNR can adopt more stringent rules and regulations if necessary to protect human health. The criteria for evaluating this includes public health. DOH anticipates that DOH would be conducting risk assessments for DNR to determine the impact to public health, as it currently does.

DOH assumes this proposal could increase the risk assessment activities performed by DOH. DOH would request three (3 FTE) Environmental Specialist III positions, along with their office and computer equipment, rent, travel expenses, and network connection fees. These three positions would be responsible for reviewing site contaminant and offsite information, evaluating site characterization data, determining potential exposure pathways, conducting investigations, document reviews as appropriate, and preparing risk assessments to determine quantitative risk to human health from contaminants. All of this would require these positions to remain current on toxicology data and risk assessment methodologies.

Officials from the **Office of Administration, Division of Budget and Planning (BAP)** assume this proposal should not result in additional costs or savings to the BAP. BAP assumes there would be impact on total state revenue. BAP defers to the Department of Economic Development for a revenue impact of this tax credit.

In response to Senate Bill 715, officials from the **Attorney General's Office (AGO)** assume the AGO would need two Assistant Attorney General IIIs and associated program costs to handle potential litigation if this bill were to pass. AGO bases this assumption on its experience in handling litigation related to Clean Air regulations which contain a similar limitation on state regulation to the proposed limitations in this bill. AGO assumes this proposal extends these rule restrictions to all areas of environmental regulation and would significantly expand the state's vulnerability to litigation challenging DNR's rule-making in these areas.

Officials from the **County Commissions of Jasper, Holt, Butler, Lincoln and Platte** did not respond to our fiscal note request. However, in a response to similar prior legislation, Jasper Co. assumed the Empire District Power Plant located in their county, pays approximately \$94,000 in taxes. Jasper Co. assumes a tax credit would hurt the county's school district the most.

ASSUMPTION (continued)

**Oversight** assumes the DNR will be required to conduct some level of review of the estimated 160 rules that may be stricter than federal rules. Oversight assumes after such a review, any necessary rule changes, or deletions could result in unknown savings, costs, or losses of revenue.

Oversight also assumes there could be unknown costs to the Solid Waste Management Districts due to this proposal as the DNR's current rules relating to Solid Waste could be considered stricter than federal rules.

Additionally, Oversight assumes that until DNR rules need to be changed or established, it appears that the FTE requested by DOH would not be necessary. If DNR rules need to be changed or established and the FTE are deemed necessary to fulfill the requirements of this proposed legislation, the DOH could request these FTE through the budget process.

**This proposal would result in a decrease in Total State Revenues.**

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
<u>GENERAL REVENUE FUND</u>			
<u>Loss to General Revenue Fund</u>			
Clean Coal Tax Credit Program	\$0	(Unknown)	(Unknown)
 <u>Cost - Dept. of Natural Resources</u>			
Personal Service	(Unknown)	(Unknown)	(Unknown)
Fringe Benefits	(Unknown)	(Unknown)	(Unknown)
Expense and Equipment	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
Total Costs - DNR	(Unknown)	(Unknown)	(Unknown)
 <u>Cost - Dept. of Economic Development</u>			
Personal Service (1 FTE)	(\$32,021)	(\$39,386)	(\$40,370)
Fringe Benefits	(\$11,531)	(\$14,183)	(\$14,537)
Expense and Equipment	<u>(\$85,720)</u>	<u>(\$99,498)</u>	<u>(\$102,483)</u>
Total Costs - DED	(\$129,272)	(\$153,067)	(\$157,390)

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
<u>Cost - Dept. of Elem. &amp; Sec. Education</u> Expense and Equipment	(Unknown)	(Unknown)	(Unknown)
<u>Cost - Attorney General's Office</u> Personal Service (2 FTE)	(\$75,000)	(\$92,250)	(\$94,556)
Fringe Benefits	(\$24,998)	(\$30,747)	(\$31,516)
Expense and Equipment	(\$36,500)	(\$23,793)	(\$24,507)
Total Cost - Attorney General's Office	(\$136,498)	(\$146,790)	(\$150,579)
 <b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	 <b><u>(\$308,931 to UNKNOWN)</u></b>	 <b><u>(\$358,820 to UNKNOWN)</u></b>	 <b><u>(\$368,444 to UNKNOWN)</u></b>

**DNR DEDICATED FUNDS**

<u>Cost - Department of Natural Resources</u> Personal Services	<u>(UNKNOWN)</u>	<u>(UNKNOWN)</u>	<u>(UNKNOWN)</u>
--	------------------	------------------	------------------

<u>FISCAL IMPACT - Local Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
<u>Cost - Solid Waste Management Districts</u>	<u>(UNKNOWN)</u>	<u>(UNKNOWN)</u>	<u>(UNKNOWN)</u>

FISCAL IMPACT - Small Business

Small businesses would be affected by this legislation only to the degree that tax credits for building "clean coal" power plants, changes to rules concerning disposal of solid waste, and changes to how some property taxes are distributed would relate to the small businesses.

## DESCRIPTION

This bill establishes an income tax credit for installing air pollution control devices on new or existing coal-fired electric generating plants. The credit for 50% of the purchase price of the equipment, up to a maximum of \$10 million, may be carried back three years, forward five years, or sold. The program will be administered by the Department of Economic Development.

The bill also requires the State Tax Commission to assess all electric generating equipment owned by electric corporations and placed into service on or after January 1, 2004. Half of the value will be distributed to the county where the generating equipment is located, and half will be distributed to contiguous counties according to population.

Further, the bill prohibits most rules of the Department of Natural Resources from being stricter than federal requirements if they pertain to solid waste, hazardous waste, underground storage tanks, and water pollution at coal-fired electric generating plants built on or after August 28, 2002. In cases where there are either insufficient or no federal guidelines, the department may develop rules if there is substantial evidence that an activity will have an adverse impact on public health or the environment.

The Department of Economic Development will establish a task force to compare coal and natural gas as fuels used to generate electricity. The task force will also develop educational materials on environmental issues related to electric generation, including the impacts of using natural gas, coal, nuclear energy, and alternative fuels. The Department of Elementary and Secondary Education will disseminate the materials to students.

The Department of Natural Resources Energy Center will establish a repository for technical information on clean coal technology.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

## SOURCES OF INFORMATION

Department of Natural Resources  
Department of Economic Development  
Public Service Commission  
Office of Public Counsel  
Department of Revenue  
State Tax Commission  
Secretary of State

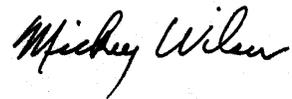
SOURCES OF INFORMATION (continued)

Department of Elementary and Secondary Education  
Department of Health and Senior Services  
Office of Administration  
    Budget and Planning  
Office of the Attorney General

NOT RESPONDING:

County Commissions

Jasper  
Holt  
Butler  
Lincoln  
Platte



Mickey Wilson, CPA  
Acting Director  
February 4, 2002